

**REMARKS**

Applicant respectfully requests entry of the foregoing and reconsideration of the subject matter identified in caption, as amended, pursuant to and consistent with 37 C.F.R. §1.112, and in light of the remarks which follow.

Claims 1, 3-27, 29-30, 32-55 and 57-58 are pending in the application.

By the above amendments, Applicant amended the claims to address various claim objections. Applicant also amended claims 12 and 14 to address §112 issues. A claim that has been amended in a manner that does not narrow the claim's scope should be accorded its full range of equivalents.

Applicant thanks the Examiner for acknowledging Applicant's Request for Continued Examination Under 37 C.F.R. §1.114 and withdrawing the finality of the previous Official Action.

Turning now to the Official Action, the specification stands objected to under 37 C.F.R. §1.57(f) for incorporating by reference "essential material" in the specification. For at least the reasons that follow, withdrawal of the objection is in order.

The Official Action alleges that Applicant improperly incorporated essential material by reference in the specification and that Applicant is therefore required to amend the specification to include the incorporated material. Applicant respectfully disagrees.

The Official Action's objection to the specification is based on Applicant's prior response to a §112, second paragraph, rejection of claims 12 and 41 for use of the word "bisbenzoazolyls." In Applicant's prior remarks, Applicant explained that the term would be understood by those of ordinary skill when read in light of the content

of the Application's disclosure, teachings of the prior art and when interpreted by those possessing the level of ordinary skill in the art. To provide evidence of the teachings of the prior art and the knowledge of those of ordinary skill, Applicant made reference to two patents, namely EP-669,323 ("EP '323") and U.S. Patent No. 2,463,264 ("the '264 patent"), merely as examples of what those of ordinary skill in the art understood the subject term to mean at the time the application was filed.

Because this information was in the public domain and Applicant was referring to these patents merely as evidence of the general understanding in the field at the time the application was filed, there is no improper incorporation by reference of "essential" material, as alleged in the Official Action.

Applicants respectfully request reconsideration and withdrawal of the objection to the specification.

Claims 3-27, 29, 32-55 and 57-58 stand objected to for including various informalities. For at least the reasons that follow, withdrawal of the objection is in order.

First, concerning the objection to the claims for improperly capitalizing the word "claim," Applicant is aware of no requirement in the M.P.E.P. or elsewhere that requires patent applicants to present the word "claim" in lower case format. In an effort to expedite prosecution, however, Applicant has amended the claims, where appropriate, as suggested by the Official Action.

Concerning the objection to claims 13 and 42 for capitalizing the names of chemical compounds, Applicant again submits that it is not aware of any Patent Office requirement that chemical compound names be presented in lower case

format. Again, however, to expedite prosecution Applicant has amended the claims, as suggested in the Official Action.

With respect to the rejection of claim 42 for including a typographical error in a chemical name, Applicant has amended claim 42 to correct the error.

For at least the above reasons, Applicant respectfully requests reconsideration and withdrawal of the claim objections.

Claims 12 and 41 continue to stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. For at least the reasons that follow, withdrawal of the rejection is in order.

Applicant does not understand the Official Action's statement that Applicant admitted that the teachings of EP '323 and the '264 patent would only teach enough for a person of ordinary skill in the art to ascertain a small subset of compounds. Applicant merely pointed to these two references as providing examples of bisbenzoazolyl derivatives known to persons of ordinary skill in the art.

Many other references provide evidence of the understanding of "bisbenzoazolyl" that those of ordinary skill in the art had at the time Applicant filed the application. For example, U.S. Patent No. 6,379,655, filed November of 2000, describes bisbenzoazolyl derivatives, U.S. Patent No. 6,403,061, filed October of 2000, describes bisbenzoazolyl derivatives, U.S. Patent No. 7,270,685, filed January of 2006 with a foreign priority date of April 2002, describes bisbenzoazolyl derivatives, U.S. Patent No. 7,217,821, filed in April of 2004 with a foreign priority date of April 2003, describes bis-benzoazolyl derivatives, U.S. Patent No. 7,189,267, filed September of 2003, with a foreign priority date of September 2002, discusses bis-benzoazolyl derivatives, U.S. Patent No. 7,138,108, filed June of 2003

with a foreign priority date of June 2002, discusses bis-benzoazolyl derivatives, U.S. Patent No. 7,012,101, filed January of 2003 with a foreign priority date of January 2002, describes bis-benzoazolyl derivatives and U.S. Patent No. 6,958,155, filed June of 2002 discusses bis-benzoazolyl derivatives.

Thus, at least eight (8) issued U.S. patents (most filed before the instant application) describe bis-benzoazolyl derivatives. This shows that persons of ordinary skill in the art understood what this term meant when Applicant filed the instant application.

In addition, many of the above-identified patents include claims that use this term. Accordingly, at least eight (8) different U.S. Patent Office Examiners examined applications with claims and/or specifications that included the word "bis-benzoazolyl derivative" and determined on at least eight (8) different occasions that it satisfied the requirements of §112. Further, these determinations were (in many of the applications) made based on substantially the same disclosure concerning the subject derivatives as that provided in the present application.

Again, the purpose of the claims is not to explain the technology or how it works, but to state the legal boundaries of the patent grant. Definiteness of a claim must be analyzed, not in a vacuum, but in light of (1) the content of the particular application disclosure, (2) the teachings of the prior art (which include the above-identified issued U.S. patents), and (3) the claim interpretation that would be given by one possessing the ordinary level of skill in the art pertinent at the time the claimed subject matter was made. See *In re Marosi*, 701 F.2d 799, 218 U.S.P.Q. 289 (Fed. Cir. 1983).

In view of the above discussion, Applicant again submits that the term "bisbenzoazolyls" is clear when read in light of the application's disclosure, teachings of the prior art and when interpreted by those possessing the ordinary level of skill in the art. Further, it appears that at least eight different U.S. Patent Office Examiners have agreed.

Because one skilled in the art would be able to tell with a reasonable degree of certainty whether his or her conduct is within or outside the scope of the claims, the claims are neither vague nor indefinite. See *In re Brokowski*.

For at least these reasons, Applicant respectfully requests reconsideration and withdrawal of the §112, second paragraph, rejection.

Claims 12-13, 21-22, 41-42 and 49-50 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. For at least the reasons that follow, withdrawal of the rejection is in order.

The Official Action alleges that the identified claims are indefinite because they refer to derivatives of various classes of chemical compounds including "dimers derived from  $\alpha$ -alkylstyrene." The Official Action alleges that the term "derivative" is not defined in the specification and that although several examples of derivatives are provided, the examples are not definitions because the examples do not clearly set forth the metes and bounds of a term. The Official Action further asserts a dictionary definition of "derivative" and alleges that this definition does not clarify Applicant's intended meaning of the various derivatives of chemical classes of compounds recited in the claims. Applicant respectfully disagrees.

First, Applicant has amended the claims to replace "dimers derived from  $\alpha$ -alkylstyrene" with --dimers of  $\alpha$ -alkylstyrene-- where appropriate, because Applicant

believes that this is more appropriate language. Clearly, this is not a narrowing amendment.

Concerning the Official Action's position regarding "derivative," however, Applicant again points to the above-noted issued U.S. patents, which also disclose and/or claim various chemical derivatives. Again, at least eight different Examiners examined the applications that issued as the above-identified patents. In the applications that included claims using the word "derivative," the Examiners determined that the term satisfied the requirements of §112.

Applicant respectfully submits that "derivative" is clear when read in light of the content of the application disclosure, the teachings of the prior art and when interpreted by those possessing the ordinary level of skill in the art. Multiple different patent Examiners have agreed, as evidenced by the above-identified issued U.S. patents. Accordingly, Applicant submits that because one skilled in the art would be able to tell with a reasonable degree of certainty whether his or her conduct is within or outside the scope of the claims, the claims are neither vague nor indefinite. See *In re Borkowski*.

For at least the reasons stated above, Applicant respectfully requests reconsideration and withdrawal of the §112, second paragraph, rejection of claims 12-13, 21-22, 41-42 and 49-50.

Claims 1, 3-6, 9-18, 25, 29-30, 32-46, 53 and 58 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Iijima* (U.S. Patent No. 6,258,857) in view of *Fankhauser* (U.S. Published Application 2002/0155073); claims 1, 3-12, 14-25, 29-30, 32-41 and 47-52 stand rejected under §103(a) as being unpatentable over *Iijima* in view of *Torgerson* (U.S. Patent No. 6,458,906); and claims 26-27, 54-55 and

57 stand rejected under §103(a) as being unpatentable over *Iijima* in view of *Torgerson* and further in view of *Candau* (U.S. Patent No. 6,033,648). For at least the reasons that follow, withdrawal of these rejections is in order.

Independent claim 1 defines a device comprising (A) a reservoir confining at least one composition intended for protecting the skin and/or hair against UV radiation, and (B) means to place said composition under pressure, wherein said composition is in the form of simple or complex emulsion and comprises, in a cosmetically acceptable aqueous carrier: (a) a photoprotective system capable of screening out UV radiation; and (b) spherical microparticles of porous silica.  
(emphasis added)

Independent claim 30 defines a composition suited for pressurization and intended for protecting the skin and/or hair against UV radiation, wherein said composition is in the form of a simple or complex emulsion and comprises, in a cosmetically acceptable aqueous carrier: (a) a photoprotective system capable of screening out UV radiation; and (b) spherical microparticles of porous silica  
(emphasis added).

The Official Action asserts that each §103(a) rejection is maintained for the reasons set forth in the Official Action mailed on November 30, 2005 and/or May 12, 2006. Applicant continues to respectfully disagree with the bases presented in these prior Official Actions.

*Iijima* relates to (1) a composition contained in the releasing container such as an aerosol container or pump-type releasing container, and used as being released from such releasing container, and (2) a releasing container product containing such composition. (See *Iijima* at column 1, lines 5-11.)

*Fankhauser* relates to the use of mixtures of micronized organic UV filters for preventing tanning and for lightening human skin and hair and to their use in cosmetic and pharmaceutical formulations. (See *Fankhauser* at column 1, paragraph [0001].)

To establish a *prima facie* case of obviousness, the prior art references (or references when combined) must teach or suggest all of the claimed features. See *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). In addition, "all words in a claim must be considered in judging the patentability of that claim against the prior art." See *In re Wilson*, 424 F.2d 1382, 1385; 165 U.S.P.Q. 494 496 (C.C.P.A. 1970). See M.P.E.P. §2143.03.

Applicant again submits that neither *Iijima* nor *Fankhauser*, alone or in combination, disclose or fairly suggest a device or composition comprising an emulsion and a photoprotective system capable of screening out UV radiation, as recited in independent claims 1 and 30. In addition, neither reference, alone or in combination, discloses or fairly suggests a device comprising such an emulsion and photoprotective system and further comprising a means to place the composition comprising the emulsion and photoprotective system under pressure, as further recited in claim 1.

In particular, Applicant submits that *Iijima* is directed to concentrated internal liquid compositions in a releasing container. The disclosed composition is generally in the form of an aqueous lotion with dispersed particles of porous silica therein carrying an active compound. The particles are used in association with a synthetic resin and/or acrylic acid polymer in the presence of an alkaline agent. The active compound may be a perfume, an insect repellent, a deodorant, a plant extract, etc.

Nowhere, however, does *Iijima* disclose or fairly suggest an emulsion comprising a photoprotective system capable of screening out UV radiation and spherical microparticles of porous silica.

Furthermore, the Examples (Examples 1-9) of *Iijima* appear to be specifically directed to hydroalcoholic lotions containing porous silica carrying active ingredients, which do not constitute UV screening agents, but are instead insect repellents such as, for example, DEET, or antiperspirants such as, for example, aluminum hydroxide chloride.

Furthermore, *Iijima* does not disclose or fairly suggest using porous silica particles in a composition in the form of an emulsion comprising (a) a photoprotective system capable of screening out UV radiation and (b) spherical microparticles of porous silica, wherein the composition is conditioned in a pressurized device.

In addition, while *Iijima* may disclose compositions further containing surfactants, the surfactants are disclosed to be useful only for enhancing the dispersion performance of the porous fine particles, not for forming emulsions. (See *Iijima*, for example, at column 12, lines 60-64 and column 13, first paragraph.)

*Fankhauser* does not overcome these deficiencies.

Thus, the asserted combination of references does not establish a *prima facie* case of obviousness because it does not teach or fairly suggest all of the claimed features and fails to reflect the proper consideration of "all words" in the claims. Specifically, the asserted combination fails to reflect the proper consideration of "a simple or complex emulsion," "a photoprotective system capable of screening UV radiation," and "means to place said composition under pressure."

Additionally, Applicant again submits that the Official Action does not establish a *prima facie* case of obviousness under §103 because the Official Action does not provide sufficient reasons to demonstrate *why* one of ordinary skill in the art would have been led to modify *Iijima* or to combine *Iijima* with *Fankhauser* to arrive at the claimed subject matter. Again, the requisite motivation for doing so must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art, not from Applicant's disclosure. See *Ex parte Nesbit*, 25 U.S.P.Q. 2d, 1817, 1819 (BPAI 1992); *In re Oetiker*, 24 U.S.P.Q. 2d 1443, 1446 (Fed. Cir. 1992). The mere fact that the prior art could be modified does not make such a modification obvious unless the prior art or some other evidence specifically suggests the desirability of that modification. See *In re Gordon*, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). There must be some intrinsic basis in the prior art or some extrinsic factor that would prompt one of ordinary skill in the art to combine teachings of the references; otherwise, the Patent Office's burden of establishing a *prima facie* case of obviousness has not been met.

Moreover, the determination of whether some reason, suggestion, or motivation existed for making the combination must be made from the viewpoint of a hypothetical person of ordinary skill in the field of the invention. See *In re Oetiker*, 24 U.S.P.Q. 2d at 1446; and *In re Raines*, 28 U.S.P.Q. 2d 1630, 1631 (Fed. Cir. 1993). In the present case, no such factors or motivation for combining or modifying *Iijima* and *Fankhauser* exist. *Iijima* fails to disclose or fairly suggest an emulsion containing a UV filtering agent; the Examples of *Iijima* are specifically directed to hydroalcoholic lotions containing porous silica active ingredients that do not constitute UV screening agents; *Iijima* fails to specifically disclose using porous silica

particles in a composition in the form of an emulsion containing the claimed ingredients; and *Iijima* only discloses using of surfactants in the composition to enhance dispersion performance of the porous fine particles, not for forming emulsions. *Fankhauser* does not overcome these deficiencies. Specifically, nowhere does *Fankhauser* disclose or fairly suggest modifying *Iijima* to use spherical microparticles of porous silica in a pressurized emulsion composition, as claimed.

In view of these deficiencies in *Iijima* and the failure of *Fankhauser* to provide any suggestion that one should, or even could, enhance SPF by modifying *Iijima* to include the combination of claimed features, Applicant submits that the Official Action has not demonstrated that one of ordinary skill in the art would have been motivated to combine the references to obtain the claimed combinations of features. Accordingly, Applicant again submits that there is no basis, absent impermissible use of hindsight based on Applicant's disclosure, for combining the references as suggested by the Official Action.

The Official Action also fails to establish that the prior art provides a reasonable expectation of success. M.P.E.P. §2143.02 states that a reasonable expectation of success is also required to establish a *prima facie* case of obviousness. That is, beyond looking to the prior art to determine if it suggests doing what the inventor has done, one must also consider if the prior art provides the required expectation of succeeding in that endeavor. See *In re Dow Chem. Co. v. American Cyanamid*, 837 F.2d at 873, 5 U.S.P.Q. 2d at 1531 ("both the suggestion and the expectation of success must be founded in the prior art, not in Applicants' disclosure.") In this case, however, the asserted combination of references provides neither a suggestion nor an expectation of success in doing what the inventors have

done (i.e., discovering that the claimed combination of features provides unexpectedly enhanced sun protection factor (SPF).) Specifically, one would not have expected to obtain the claimed composition from the cited references, alone or in combination.

Additionally, Applicant again submits that the Federal Circuit has established that evidence arising out of the so-called secondary considerations must always, when present, be considered en route to a determination of obviousness. Indeed, evidence of secondary considerations can be the most probative and cogent evidence in the record. It can establish that an invention appearing to have been obvious in light of the prior art was not. See *Stratoflex, Inc. v. Aeroquip Corp.*, 218 U.S.P.Q. 871, 879 (Fed. Cir. 1983); and *Joy Technologies v. Quigg*, 14 U.S.P.Q. 2d 1432, 1444 (DDC 1990).

In this case, there is clearly no appreciation in any of the cited references, alone or in combination, of the unexpected and surprising advantages obtained by the claimed device and composition. In particular, the cited references, even in combination, fail to disclose or suggest that one could combine the specific features claimed to arrive at a device and/or composition exhibiting significantly increased sun protection factor (SPF).

As indicated in Applicant's response submitted on August 14, 2006, Applicant provided comparative test data to further support this position. Applicant's comparative tests were carried out with (1) an anti-sun formulation A in the form of a hydroalcoholic lotion according to *Iijima* capable of being packaged as a non-aerosol spray and capable of being dispensed in the form of fine particles and (2) an anti-sun formulation B in the form of an emulsion according to the present claims capable of

being packaged as a non-aerosol spray and capable of being dispensed in the form of fine particles. The results presented in the tables included in Applicant's August 14 response clearly show that the addition of spherical microparticles of porous silica to an emulsion containing a UV filter (benzophenone-3 s) makes it possible to significantly increase sun protection factor (SPF) by more than 100%.

Accordingly, even if the Official Action had established a *prima facie* showing of obviousness, which Applicant submits it has not, the unexpected results achieved by the claimed combination of features would rebut such a showing.

To further support Applicant's prior remarks, Applicant provides the attached Declaration of Dr. Martin Josso. Dr. Josso has a Ph.D. in Organic Chemistry and an undergraduate degree in Chemical Engineering. He has conducted research in the field of Cosmetic Science, specifically suncare, for 12 years and is presently a Research Scientist in the Department of Suncare Product Development at L'Oreal. Dr. Josso's expert opinion, after reviewing the Official Action and the cited references, is that none of the cited references, alone or in combination, disclose or fairly suggest a device or composition comprising an emulsion and a photoprotective system capable of screening UV radiation, as recited in claims 1 and 30.

Dr. Josso provides a detailed discussion of his analysis of *Iijima* supporting the above-discussion concerning the various identified deficiencies therein and the secondary references' failure to overcome them.

Dr. Josso's Declaration also provides a detailed description of the comparative tests he conducted using (1) an anti-sun formulation A in the form of a hydroalcoholic lotion according to *Iijima* capable of non-aerosol spray packaging and

fine particle dispersion and (2) an anti-sun formulation B according to the present claims capable of non-aerosol spray packaging and the fine particle dispersion.

Dr. Josso explains that the results he obtained show that the addition of spherical microparticles of porous silica to an emulsion containing a UV filter (benzophenone 3s) makes it possible to unexpectedly increase SPF by more than 100%. (Emphasis added.)

Dr. Josso also explains why the tests he performed are an appropriate comparison. He explains that he had to compare an aqueous composition of *Iijima* including microparticles of porous silica and UV filter to an emulsion according to the present claims of microparticles of porous silica and UV filter. He wanted to compare two (2) compositions that were as close as possible. He chose embodiment 6 of *Iijima* with 2.5% silica, 0.8% polyethylene powder, active ingredient (7% DEET and 2.5% 1,3 butylene glycol) and 87.2% ethanol. He believes that a comparison with other embodiments, such as embodiment 9, of *Iijima* would not be appropriate because the high water content of embodiment 9 would cause phase separation due to the amount of oil and benzophenone-3 in the formula.

For at least these reasons, independent claims 1 and 30 are patentable over *Iijima* in view of *Fankhauser*. The remaining claims depend, directly or indirectly, from the rejected independent claims and are, therefore, also patentable over *Iijima* in view of *Fankhauser* for at least the reasons that independent claims 1 and 30 are patentable.

*Torgerson* relates to water and alcohol soluble or dispersible thermoplastic elastomeric copolymers and to cosmetic and pharmaceutical compositions containing these copolymers. (See *Torgerson* at column 1, lines 10-15.) Applicant

submits that *Torgerson* fails to overcome the above-identified deficiencies of *Iijima*. Again, to establish a *prima facie* case of obviousness, the prior art references (or references combined) must teach or suggest all of the claimed features. Moreover, "all words in a claim must be considered in judging the patentability of that claim against the prior art." (See *In re Royka*, *In re Wilson*, and M.P.E.P. §2143.03.) The above-asserted combination of references does not satisfy these requirements and, thus, does not establish a *prima facie* case of obviousness. The asserted combination does not disclose or fairly suggest a device or composition comprising the recited combination of features including an emulsion and a photoprotective system capable of screening out UV radiation; there is no disclosure or suggestion of using a composition in the form of an emulsion comprising a photoprotective system capable of screening out UV radiation in combination with spherical microparticles of porous silica, as recited in claims 1 and 30, or a device comprising such a composition and means to place the composition under pressure, as further recited in claim 1. Accordingly, *Iijima* in view of *Torgerson* fails to disclose or fairly suggest the features of independent claims 1 and 30, and fails to reflect a proper consideration of all words in the independent claims.

The Official Action also fails to establish a *prima facie* case of obviousness because it fails to show why one of ordinary skill in the art would have been led to modify the references to arrive at the claimed combination of features. There is no basis, absent the impermissible use of hindsight based on Applicant's disclosure, for combining the references as suggested in the Official Action. Additionally, the Official Action provides no evidence to suggest that the cited references provide an expectation of success in doing what the inventors have done.

Finally, even if the Official Action had established a *prima facie* showing of obviousness, the unexpectedly enhanced sun protection factor (SPF) resulting from the claimed combination of features rebuts any such showing. (See Dr. Joso's attached Declaration and the comparative test results presented in the tables attached to Applicant's response of August 14, 2006).

For at least these reasons, claims 1 and 30 are patentable over the asserted combination of *Iijima* in view of *Torgerson*. Because the remaining claims depend, directly or indirectly, from independent claims 1 or 30, the remaining claims are also patentable over *Iijima* in view of *Torgerson* for at least the reasons that claims 1 and 30 are patentable. Reconsideration and withdrawal of the §103(a) rejection over *Iijima* in view of *Torgerson* are respectfully requested.

*Candau* relates to novel cosmetic and/or dermatological compositions comprising at least one iron oxide nanopigment, well suited for artificially tanning and/or darkening human skin to such extent as to resemble a natural tan. (See *Candau* at column 1, lines 10-18). Applicant submits that *Candau* fails to overcome the above deficiencies of *Iijima* and *Torgerson*.

In particular, the asserted combination of *Iijima*, *Torgerson* and *Candau* fails to establish a *prima facie* case of obviousness, because the combination does not disclose or fairly suggest all features of the independent claims, which are necessarily present in rejected claims 26-27, 54-55 and 57. The asserted combination fails to disclose or fairly suggest a device or composition comprising an emulsion and a photoprotective system capable of screening out UV radiation, as recited in independent claims 1 and 30. The asserted combination also fails to disclose or fairly suggest a device comprising a means to place such composition

under pressure, as further recited in claim 1. Accordingly, the asserted combination fails to disclose or fairly suggest these features of the independent claims and does not reflect a proper consideration of all words in independent claims 1 and 30.

The Official Action also fails to demonstrate that one of ordinary skill in the art would be motivated to combine the references to obtain the claimed combination of features, absent the impermissible use of hindsight based on Applicant's own disclosure. The Official Action also fails to demonstrate that the prior art establishes an expectation of success in doing what the inventors have done. Accordingly, the Official Action fails to establish a *prima facie* case of obviousness for at least these additional reasons.

Additionally, even if the Official Action had established a *prima facie* showing of obviousness, the unexpectedly enhanced sun protection factor (SPF) resulting from the claimed combination of features would rebut any such showing. (Again, see Dr. Josso's attached Declaration and the comparative test results presented in the tables attached to Applicant's response of August 14, 2006.)

For at least these reasons, claims 26-27, 54-55 and 57 are patentable over the asserted combination of references for at least the reasons that claims 1 and 30 are patentable. Reconsideration and withdrawal of the §103(a) rejection over *Iijima*, *Torgerson* and *Candau* are respectfully requested.

Claims 1, 3, 4, 9-12, 14-17, 30, 32, 33, 38-41 and 43-46 stand provisionally rejected on the grounds of non-statutory obviousness-type double patenting over claims 1, 4, 6-15, 29 and 30 of copending application No. 10/365,653. Because of the provisional nature of the rejection, Applicant again requests that the rejection continue to be held in abeyance until there has been an indication of allowable

subject matter. At that time, if the rejection is maintained, Applicant will respond appropriately.

From the foregoing, Applicant earnestly solicits further and favorable action in the form of a Notice of Allowance.

If there are any questions concerning this paper or the application in general, the Applicant invites the Examiner to telephone the undersigned at the Examiner's earliest convenience.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC



Date: December 6, 2007

By:

Martin A. Bruehs  
Registration No. 45635

P.O. Box 1404  
Alexandria, VA 22313-1404  
703 836 6620

Attachment: Declaration by Martin Josso under 37 C.F.R. § 1.132